

JOINT STATEMENT OF

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AND

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BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

HEARING ON THE RAIL SAFETY IMPROVEMENT ACT OF 2008

MARCH 17, 2011

**Association of American Railroads
425 Third Street SW
Washington, DC 20024
202-639-2100**

On behalf of Norfolk Southern and the other members of the Association of American Railroads, thank you for the opportunity to discuss the Rail Safety Improvement Act of 2008 (RSIA). AAR freight railroad members, which include the seven large U.S. Class I railroads as well as approximately 75 U.S. short line and regional railroads, account for the vast majority of freight railroad mileage, employees, and traffic in Canada, Mexico, and the United States. Norfolk Southern (NS) operates approximately 21,000 route-miles in 22 states and the District of Columbia (16 percent of total mileage of AAR member freight railroads), has nearly 30,000 employees (18 percent of AAR member employment), and in 2010 had railway operating revenue of \$9.5 billion (approximately 15 percent of total industry revenue). Amtrak and several commuter railroads are also members of the AAR.

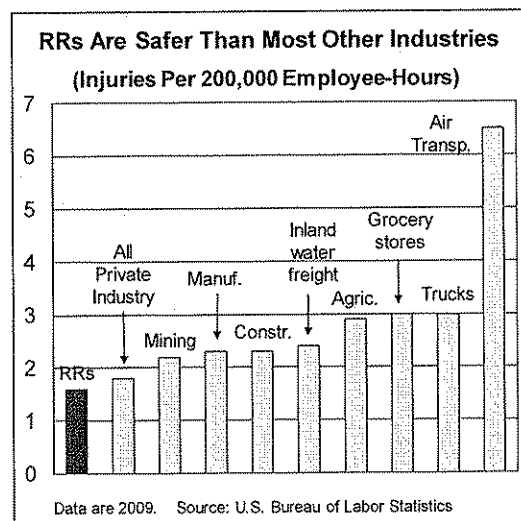
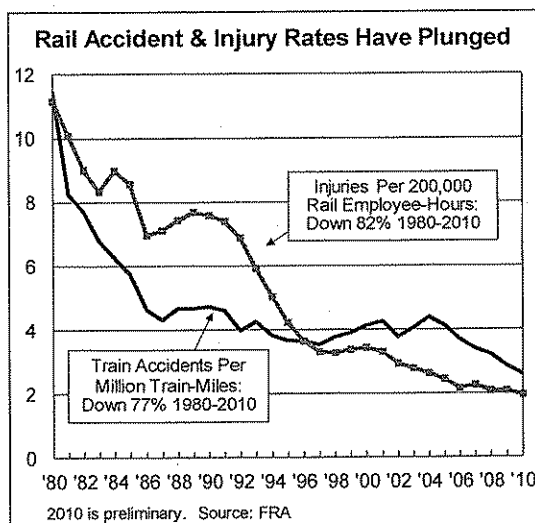
Overview of Rail Safety

It's important to note at the outset that for Norfolk Southern and other freight and passenger railroads in this country, pursuing safe operations is not an option, it's an imperative. It makes business sense and it's the right thing to do. Through massive investments in safety-enhancing infrastructure, equipment, and technology; extensive employee training; extensive cooperation with rail labor, suppliers, customers, communities, and the Federal Railroad Administration (FRA); and cutting-edge research and development, railroads are at the forefront of advancing safety.

The rail industry's excellent safety record reflects its strong and pervasive commitment to safety. In fact, 2010 was the safest year ever for America's railroads, breaking the previous record set in 2009. From 1980 to 2010 the train accident rate has been reduced by 77 percent, the rail employee injury rate by 82 percent, and the grade crossing collision rate by 81 percent — setting new record lows in each category, according to the most recent FRA

data. At Norfolk Southern, safety improvement over the years has been even better than the industry average. For 21 consecutive years, Norfolk Southern has won the E. H. Harriman Gold Medal award for employee safety. The award is given annually to the major U.S. railroad with the lowest rate of employee injuries per employee hours worked. NS is proud of its successes in winning the awards, but every year the competition is extremely competitive because other railroads are very safe too.

According to data from the Bureau of Labor Statistics, railroads today have lower employee injury rates than most other major industries, including trucks, inland water transportation, airlines, agriculture, mining, manufacturing, and construction — even lower than grocery stores. Available data also indicate that U.S. railroads have employee injury rates well below those of most major foreign railroads.



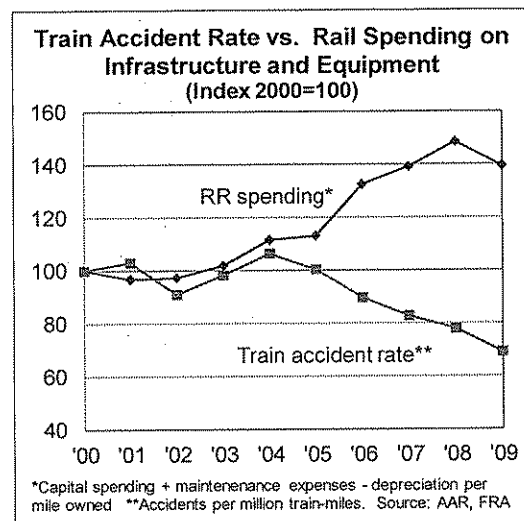
Railroads' impressive safety record results from their recognition of their responsibilities regarding safety and the enormous resources they devote to its advancement. At the same time, railroads recognize that more work remains to be done to further improve safety. Railroads are always willing to work cooperatively with members of this committee,

other policymakers, the FRA, rail employees, their customers, and others to find practical, effective ways to make this happen.

A commitment to safety demonstrated day in and day out in the workplace is critical to promoting safety. Norfolk Southern and other railroads have that commitment. But a healthy balance sheet is important to safety as well. A financially-viable railroad will be in a much better position to invest in safety enhancements and risk reduction strategies than a financially-challenged carrier.

The record investments that railroads have made in their infrastructure, equipment, and technology in recent years have made railroads much safer. In fact, there is a clear relationship between rail reinvestments and rail safety improvements (see chart at right). These investments were made possible by the moderate improvements in profitability that railroads have achieved since passage of the Staggers Rail Act of 1980. Consequently, legislative or regulatory actions that unduly restricted rail earnings could have unintended negative safety consequences in addition to negative capacity, efficiency, and service reliability consequences.

Of course, no budget is unlimited, even for something as important as safety. The cause of safety will not be advanced if resources are directed to programs or requirements that do little to improve safety, or if government mandates syphon resources that would have a more pronounced impact on safety if spent elsewhere. Policymakers should also be aware



that policies that increase the cost of rail service will drive more traffic to the highways, where the safety record is far less favorable than it is on the rails.

The Rail Safety Improvement Act of 2008

The Rail Safety Improvement Act of 2008 (Pub. L 410-132) was signed into law by President Bush on October 16, 2008. The Act's provisions address a wide range of topics related directly or indirectly to rail safety, including highway-rail grade crossings, pedestrian safety and trespasser prevention, hours of service reform, new technologies, regulatory oversight, substance abuse and drug testing, radio monitoring, and many other areas.

A major focus of the RSIA is "positive train control" (PTC). Railroads believe that the FRA's final rules implementing the PTC-related provisions of the RSIA impose onerous and unjustified requirements on railroads that are not consistent with the underlying statute or sound application of cost-benefit analysis. The rail industry's concerns in this regard are discussed in more detail below.

What is Positive Train Control?

The RSIA mandates that positive train control systems be installed by the end of 2015 on U.S. Class I rail main lines used to transport toxic-by-inhalation (TIH) materials and on all main lines used to transport passengers.^{1,2} This is the most expensive and far-reaching safety mandate in U.S. railroad history.

Positive train control describes technologies designed to automatically stop or slow a train before certain accidents caused by human error occur. Specifically, PTC, as mandated by the RSIA, must be designed to prevent train-to-train collisions; derailments caused by

¹ "Main line" for freight rail purposes is defined as a rail line carrying 5 million or more gross tons of freight annually. That's roughly equal to one loaded and one unloaded 100-car train per day.

² Toxic inhalation hazard" materials (TIH) are gases or liquids (such as chlorine and anhydrous ammonia) that are especially hazardous if released into the atmosphere.

excessive speed; unauthorized incursions by trains onto sections of track where maintenance activities are taking place; and the movement of a train through a track switch left in the wrong position.

A fully functioning PTC system must be able to determine the location and speed of trains, warn train operators of potential problems, and take action if the operator does not respond to a warning. For example, if a train operator fails to stop a train at a stop signal or slow down for a speed-restricted area, the PTC system would provide a warning and then apply the brakes automatically (if the engineer does not do so) *before* the train exceeds its authority.

This might sound simple, but to work properly it requires highly complex technologies and information processing capabilities and communications systems able to incorporate and analyze the huge number of variables that affect rail operations. A simple example illustrates this point. A PTC system must be able to stop a train when circumstances require it, but the length of time it takes to stop a train depends on a number of factors, including the terrain, weight and length of the train, the type of braking technology on the train, track curvature, and track gradient. A PTC system must be able to take all of these factors into account reliably and accurately. In addition to these hurdles, the communications systems must be “interoperable” so that one railroad’s PTC-equipped locomotive can operate on another railroad’s lines and fully communicate.

AAR estimates that PTC technology will have to be deployed on approximately 73,000 miles of U.S. freight rail lines.³

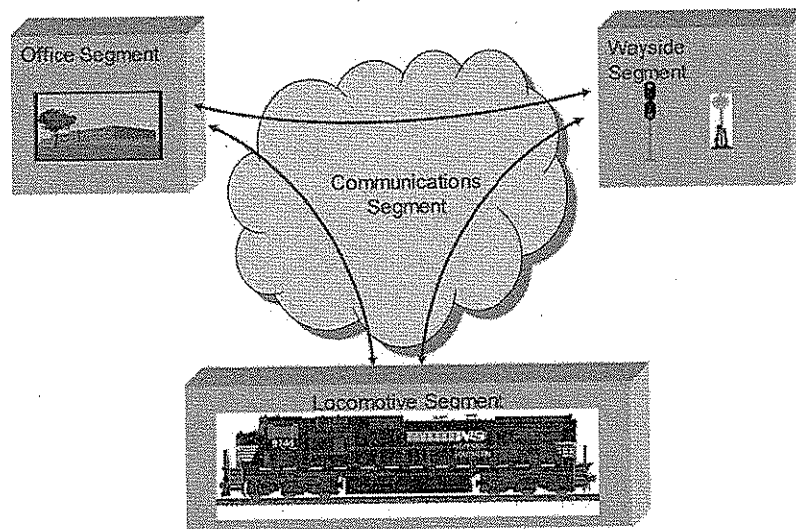
Figure 1 is a highly simplified illustration of the communication pathways required by a fully functioning PTC system. Railroad dispatching centers located throughout the country;

³ Based on current FRA regulations that use 2008 as the base year. See page 9 for more on this.

tens of thousands of track-side devices installed at signals, switches, and other locations along the track; and thousands of freight and passenger locomotives must all function, in essence, as a single unit that operates seamlessly among the various railroads. Because it is an integrated system and all the components must operate hand in hand, if even one part of the PTC system does not function properly, then the entire PTC system will not function properly.

Figure 1: PTC System Interactions

Each segment requires highly complex technologies and information processing capabilities.



Huge Costs That Far Outweigh Benefits

Railroads are committed to meeting the PTC mandate and are working hard to make it happen, but it will be an enormous technical and financial undertaking. According to the FRA, railroads will have to spend around \$5 billion just to install PTC. Railroads think that estimate is far too low. Their best estimate to date is that installation will cost approximately \$5.8 billion for freight railroads and another \$2.4 billion for passenger railroads. Both the FRA and the railroads agree that PTC will require hundreds of millions of dollars each year to maintain. In total, according to FRA estimates, the net present value of the costs to railroads to install and maintain PTC is as much as \$13.2 billion over 20 years.

The benefits of PTC, however, will be nowhere near its costs. In fact, the FRA estimates that the net present value of PTC-related safety benefits over the next 20 years is no more than \$674 million.

In other words, even using FRA's cost and benefit estimates, railroads will incur approximately \$20 in PTC costs for each \$1 in PTC safety benefits.

Because railroads do not have unlimited funds to devote to infrastructure projects, expenditures on PTC necessarily mean reduced expenditures on other projects that would increase capacity, promote economic recovery, improve service, provide environmental benefits, and, importantly, enhance safety in more effective ways.

The disparity between costs and benefits is so large because railroad operations are already very safe, as previously discussed, and PTC will prevent only a very small number of the rail accidents which do



PTC cab display unit

occur. In fact, according to an AAR analysis of FRA safety data and as discussed further below, only around 4 percent of all train accidents on Class I rail main lines are likely to be prevented by PTC systems.

Many PTC-preventable accidents are minor, but some are not. Railroads are fully aware that some of the accidents that PTC systems are designed to prevent can be extremely serious, with significant injuries and loss of life. No one wants to find ways to prevent these types of accidents more than the railroads themselves. The question, though, is what's the best way to accomplish this. We understand that supporters of the PTC mandate in Congress and elsewhere are well intentioned, and railroads do not object to the PTC mandate when it

comes to rail lines carrying passengers. But railroads respectfully submit that, when it comes to rail lines carrying TIH materials, there are many far less costly ways to provide much greater improvements in rail safety than through the development and implementation of PTC on huge swaths of our nation's rail network.

Alternative Risk Reduction Strategies

Nothing is more important to our nation's freight railroads than the safety of their employees, customers, and the communities they serve, as is demonstrated by the scope and intensity of the industry's safety efforts. But as we noted at the beginning of this testimony, safety will not be advanced if resources are spent on programs or requirements that do little to improve safety, or if unnecessary or counterproductive mandates consume resources that would have a more pronounced impact on safety if spent elsewhere.

As noted above, PTC-preventable accidents constitute only around 4 percent of main-line accidents. By contrast, track-caused accidents account for approximately 34 percent of main-line accidents, while equipment-caused accidents account for approximately 26 percent. The railroads, of course, devote substantial resources to reducing the risk of accidents attributable to these causes, including through the use of advanced technology to detect rail and equipment defects. For example, wayside detectors that monitor the temperature of wheels can detect high temperatures due to stuck brakes. Other wayside detectors include acoustic bearing and cracked wheel detectors. For track, the railroads utilize ultrasonic detection and have worked on improving that technology.

The railroads believe that spending money on this type of equipment and other measures to reduce the overall safety risk would be more productive than the PTC expenditures mandated by Congress.

More generally, railroads believe that, as we move forward in our quest to improve railroad safety, a focus on flexible alternative risk reduction strategies would be far more fruitful than the current approach.

FRA's Final Rule Exceeds RSIA

In January 2010, the FRA issued its final rule implementing the RSIA. Unfortunately, the FRA's final rule on the PTC mandate includes provisions that go well beyond the requirements of the RSIA and what Congress intended. The industry's objections to the final rule include, among other issues, the baseline year and how to handle cases in which only very small amounts of TIH materials are carried on a railroad's lines.

Baseline Year

In its final rule, the FRA ordered railroads to install PTC on rail lines that carried TIH materials in 2008, even though 2015 is the deadline cited in the statute. Using 2008 makes no sense because TIH traffic patterns in 2015 will be vastly different than they were in 2008. In fact, TIH traffic patterns are already changing because of changes in the marketplace (*e.g.*, rail customers moving TIH production or use to other locations, going out of business, replacing TIH materials with safer substitutes, etc.)⁴ and because of recent U.S. DOT regulations requiring railroads to make sure that TIH materials are being transported on the safest, most secure routes.

If unchanged, the 2008 as base-year provision means railroads would have to spend more than \$500 million in the next few years to deploy PTC on more than 10,000 miles of rail lines on which neither passengers nor TIH materials will be moving in 2015.

⁴ Clorox, for example, announced in November 2009 that it is phasing out, over several years, production of its namesake bleach out of chlorine and sodium hydroxide. Instead, it will purchase high-strength bleach of up to 15 percent concentration and dilute it to household strength of 6 percent. This will reduce shipments of chlorine, which is the second-highest volume TIH material (behind anhydrous ammonia) shipped by rail.

De Minimis Exception

A meaningful “*de minimis*” exception — exempting rail lines from the PTC requirement if the risk of a TIH release is *de minimis* — could significantly reduce rail industry costs without compromising safety in any meaningful way. The FRA’s final rule contains a *de minimis* exception, but it is so restrictive that it would not afford any real relief.

Railroads respectfully suggest that exempting rail lines from the PTC requirement if the risk of a TIH release is comparatively very small and if railroads undertake other risk-reducing activities could significantly reduce rail industry costs without compromising safety in a meaningful way.

Recent Developments

Members of this committee probably know that the AAR filed suit in federal court challenging the FRA’s final rules on the baseline year and whether a conductor needs access to a PTC display. That suit has been put on hold under an agreement with the FRA that the FRA will entertain new notice of proposed rulemakings to revisit several issues in the current PTC rule. Accordingly, the industry is hopeful that its disagreements with the FRA regarding PTC can be resolved without any further court action.

Consistent with the agreement in the court case, the FRA recently announced that in the coming months it will review its implementing regulations to address the rail industry’s concerns regarding the baseline year issue. The railroads are hopeful that the revised final rule will conform to the underlying statute.

Finally, consistent with the settlement agreement, the FRA also announced it would consider a new rulemaking petition from the industry requesting a reassessment of existing

regulations regarding the *de minimis* exception, the use of non-PTC equipped locomotives in and around rail yards⁵, and “en-route failures.”⁶

The “Business Benefits” of Positive Train Control

Some PTC proponents claim that railroads will achieve billions of dollars in so-called “business benefits” from PTC deployment. Specifically, they claim that PTC will allow trains to be more tightly spaced. Among other things, this would supposedly increase a rail line’s effective capacity without the need to lay new track; reduce delays; save fuel; permit the removal of existing signal systems; and improve locomotive and freight car utilization.

In reality, though, these supposed “business benefits” of PTC have already been realized (usually much less expensively than would be possible using PTC) or have little or nothing to do with PTC.

For example, many of the claims that PTC will reduce train delays and allow more trains to move over a rail line presuppose the use of “precision dispatching.” This term refers to a new technology that includes enhanced train positioning information and uses sophisticated computer algorithms to determine optimal train operations. A precision dispatching system automatically analyzes a variety of factors — such as the priority levels of different trains, crew availability, the location and schedules of other trains, and many other factors — to decide in what order and when trains on a railroad’s network should travel.

But there is no direct relationship between the use of precision dispatching and PTC implementation. Even if PTC did not exist, the development of precision dispatching would

⁵ Some rail yards are located along main line tracks. During day-to-day yard operations, locomotives used exclusively in yard service will occasionally use main line tracks, but it is impractical to utilize PTC systems for yard operations.

⁶ When PTC equipment on PTC-equipped trains fails in some way while a train is away from a terminal, it will need to travel to a location where it can be repaired. It is crucial for the efficient functioning of the rail network that the PTC-disabled train not unduly disrupt the operations of other trains. Under existing FRA regulations, however, operating restrictions for these “en route failures” could unnecessarily disrupt other rail operations.

continue. NS, in fact, is deploying the nation's first precision dispatching system — called Unified Train Control System, or UTCS — with 6 of 11 divisions completed to date. In addition, NS is also rolling out across its network its "Movement Planner" system that automatically plans train movements in the most efficient manner. Neither UTCS nor Movement Planner require PTC to achieve their benefits.

Since PTC does not have a major influence on the implementation or performance of precision dispatching, PTC should not get credit for operational improvements stemming from it. Thus, great care must be taken not to credit PTC for operational improvements that are possible without its use and at far less cost.

There are two other major reasons to doubt the "business benefits" some claim for PTC. First, because of the high cost and need to rush to meet the 2015 deadline, railroads must use technologies that minimize implementation risk.⁷ However, the PTC technologies with the most promising potential for capacity/velocity benefits — such as systems which support "moving blocks"⁸ — exist only as a concept or are unproven, much more expensive, and will take much longer to develop and deploy.

In other words, there might be business benefits associated with second- or third-generation PTC systems, but railroads have not been afforded the time to develop these technologies. The result is the deployment of first-generation PTC systems, which are safety overlays on existing operating systems, that can be developed and installed in time to meet the 2015 legislative deadline. Any future PTC development with potential business benefits will come at great additional expense and well past the 2015 deadline. Thus, from a business-benefits perspective, a 2015 deadline is counterproductive.

⁷ Implementation risk refers to the risk that the system will not perform as intended.

⁸ "Moving block" refers to the creation of a "safe zone" around a moving train that no other train is permitted to enter.

Second, in some cases PTC will actually make existing rail operations *less* efficient. For example, traditional rail operations rely on the skills of locomotive engineers to stop a train. Because current PTC systems can't anticipate when to initiate train braking as well as an engineer can, they initiate braking much earlier than an engineer would. That means PTC-equipped trains will actually require *longer* braking times and *longer* distances than non-PTC equipped trains. Rather than allowing trains to be spaced more closely together, this actually forces trains to be spaced farther apart, with consequent disruptions to the flow of traffic.

An April 2010 study by the consulting firm Oliver Wyman agreed that business benefits associated with PTC will be low or nonexistent. The study found that railroads would achieve, at most, no more than around \$400 million in PTC-related business benefits over 20 years. Oliver Wyman found that, more likely, business benefits would be zero. The Oliver Wyman study also concluded that PTC-like systems currently being implemented in Europe do not support the claim that PTC will yield significant business benefits for U.S. railroads.⁹

This point is supported by events underway now in the United Kingdom. A version of PTC called "European Rail Traffic Management System" (ERTMS) is being installed there. According to British experts, ERTMS cannot be economically justified in the UK on either safety grounds or on capacity (business benefits) grounds. The only time an economic case can be made for ERTMS in the UK is when there is a need to introduce some form of train control on a line that currently has no signals or where the existing signal system requires complete replacement. This situation occurs very infrequently in the United States.

⁹ Oliver Wyman, Inc., "Assessment of the Commercial Benefits of Positive Train Control," April 23, 2010. The report is available upon request from the Association of American Railroads.

While the installation of ERTMS is being mandated under EU regulations, the planned rollout in the UK is not planned for completion until 2049, with the halfway point for installation set at 2029 — and this over fewer route-miles than will require PTC in the United States.

PTC Is Still an Emerging Technology

PTC as a concept has been around for many years, and over the years railroads have spent hundreds of millions of dollars developing it. As noted above, in the next few years railroads will be spending many billions of dollars on its development.

It is certainly true that our base of PTC-related knowledge is much deeper than it was even just a few years ago, and railroads and their suppliers will certainly continue to make progress. One of the major U.S. freight railroads, BNSF, actually has a PTC system in limited operation and the knowledge gained from BNSF's experience has been invaluable. However, PTC today is still an emerging technology and remains untested in terms of a real-world, day-to-day, multi-railroad environment implemented across all the Class I railroads.

An analogy from the world of pharmaceutical development might be useful here. Let's say a medical researcher wants to find a new treatment to fight a disease. The first step might be to screen thousands of compounds using computer simulations or other means to find candidates with certain desired chemical properties. Compounds that show sufficient promise after this initial screening then undergo further laboratory evaluation using, say, growth cultures in petri dishes. If those tests go well, the next step might be testing in mice or other animals.

Throughout this process, the foremost goal is to determine that the new compound is safe *prior* to its first use in humans. Indeed, only after all of these experiments are conducted

successfully and no toxicity is found is consideration given to clinical trials involving human subjects. The clinical trials might begin with a few human subjects, then expand if the initial trials are favorable. The trials are used to determine if the compound actually works to fight the disease and to determine if there are any long-term toxicities that did not show up in earlier tests.

Only if a compound emerges from all of these tests with an acceptable toxicity and safety profile and has been clearly demonstrated to have the desired effect in clinical trials can it be submitted for approval by the appropriate regulators for general rollout.

The entire drug development process is methodical, logical, and rigorous. So that patients with the targeted disease are able to take advantage of any potential new cure as quickly as possible, both medical researchers and regulators want to avoid unnecessary delays. However, all parties know that many parts of the drug development process simply cannot be rushed without potentially compromising safety. Such an outcome is, rightfully, considered unacceptable.

So it should be with positive train control. Railroads are fully aware of the 2015 deadline and are committed to meeting it. At the same time, the calendar should be less important than ensuring that the testing and development of PTC proceeds appropriately. Just as people can get hurt by taking new drugs that were not properly vetted, people can get hurt if PTC systems are not properly developed and tested. The last thing any of us wants is to roll out a new system that actually degrades safety, rather than enhances it. Forcing PTC implementation without adequate development and testing could lead to just that result.

A December 2010 report by the Government Accountability Office supports this view. The GAO noted that “implementing an immature system to meet the deadline could pose

serious safety risks,” and that “[i]dentifying and mitigating risks sooner, rather than later, would better ensure a reliable PTC system can be fully implemented to provide the intended safety benefits of this technology without resulting in unintended consequences.”¹⁰

Other Provisions of the RSIA That Should Be Addressed

Positive train control is clearly a major focus of the RSIA, but the legislation also addresses many other areas related to rail safety. As discussed below, railroads have concerns regarding FRA implementing rules regarding some of these areas.

Emergency Escape Breathing Apparatus

Section 413 of the RSIA mandates that railroads supply train crews with emergency escape breathing apparatus (*i.e.*, portable respirators) to provide respiratory protection for crew members in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release. On October 5, 2010, the FRA proposed standards implementing this RSIA mandate. The FRA estimated that costs to railroads will range from \$74 million to \$82 million and will exceed benefits by a ratio of 6 to 1. The benefits of this requirement are questionable at best. Several other initiatives — such as new tank car crashworthiness regulations — work to reduce exposures where respiratory protection would be beneficial. In addition, the rail industry believes that the FRA’s proposal expands the materials subject to the mandate beyond what the RSIA requires.

Non-Signaled Territory Technology and Risk Reduction Programs

Section 406 of the RSIA requires the FRA to prescribe standards governing the use of technology in non-signaled territory (*i.e.*, sections of track not governed by electronic signals).

¹⁰ Government Accountability Office, “Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology,” Report No. GAO-11-133, December 2010. The quotes are from pages 22 and 46, respectively.

Section 103 of the RSIA requires the FRA to issue regulations requiring Class I and passenger railroads to develop risk reduction programs addressing risk analysis of a railroad's operating rules and employment levels; plans to reduce accidents and injuries; fatigue management plans; and technology implementation, including analysis of electronically controlled pneumatic brakes and switch position indicators.

These two directives to the FRA have the potential to be extraordinarily burdensome to the rail industry. Having said that, the FRA is just beginning its efforts with respect to those two directives. Railroads look forward to working cooperatively with the FRA to ensure that the FRA's rules promote enhanced safety without excessively interfering with railroads' ability to provide the transportation service their customers and our economy demand.

In January 2011, President Obama announced that he is ordering a government-wide review of regulations that stifle our nation's economic competitiveness and job creation. The rail industry welcomes this review. To assist the FRA in implementing this order, the AAR recently sent a letter to FRA Administrator Joseph Szabo highlighting regulations that should be revised or eliminated consistent with the President's order. A copy of that letter is attached to this testimony as Appendix 1.

In addition, the December 2010 GAO report mentioned earlier discusses a case where FRA's existing regulations create disincentives for railroads to use state-of-the-art track inspection technologies. Track defect inspection technologies have advanced so much that many defects can now be detected well before they pose any safety risk. The problem is that, under current regulations, once the small defects are identified — even if they pose no threat to safety and instead need simply to be monitored to make sure they don't get worse —

railroads are required to take remedial action, such as limiting train speeds or repairing the track where the defects are located. Railroads can face fines if they fail to ameliorate defects, even insignificant ones, once they become aware of them. This creates a perverse incentive for railroads to remain ignorant by not employing the most advanced detection technology, rather than face sanctions for finding far more small defects than they can practically examine and fix in a timely manner.

Conclusion

Thank you for the opportunity to testify on this critical topic. The railroad industry is committed to working with its employees, Congress, the FRA, its customers, and others to ensure that rail safety continues to improve.

Appendix 1



ASSOCIATION OF AMERICAN RAILROADS

Office of the President
Edward R. Hamberger
President and Chief Executive Officer

January 25, 2011

Administrator Joseph Szabo
Federal Rail Administration
Room W30-308
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Szabo:

President's Obama's announcement last week that he is ordering a government-wide review of regulations that stifle this country's economic competitiveness and job creation is welcome news. We share the President's point of view that a 21st-century regulatory system should be void of excessive, inconsistent and redundant regulation so as to foster the right balance between benefits and costs.

Recognizing that the Federal Railroad Administration will look to implement the Order, the Association of American Railroads respectfully suggests that the agency work with the freight railroads to identify regulations that should be revised or eliminated consistent with the President's Executive Order. The AAR believes that to achieve the right balance between free markets and public safeguards sought by President Obama, there are a number of FRA regulations that deserve serious reexamination.

Positive Train Control

PTC represents the most expensive railroad safety program ever mandated by the federal government. And from a railroad perspective, there exists no greater disparity between costs and benefits than the Positive Train Control program. Even the FRA's own economic analysis concluded that the costs of PTC outweigh the benefits by approximately 20 to 1.

The AAR believes that the recent Executive Order directing agencies to adopt a regulation "only upon a reasoned determination that its benefits justify its costs" and review existing significant regulations to determine if they should be modified or repealed, coupled with FRA's conclusion that PTC costs outweigh PTC benefits by 20 to 1, requires a reexamination of the PTC regulations.

At the January 13, 2011, meeting with railroad Chief Operating Officers, the railroads identified key aspects of the PTC regulation that should be scrutinized as part of the review of regulations whose costs greatly exceed their benefits. Of particular note are the requirements for:

- Use of 2008 instead of 2015 as the baseline year;
- Installation of a second PTC display screen for the conductor (and FRA's recent position that the second PTC display must be interactive);
- Operating restrictions for PTC en route failures; and
- PTC for yard moves on main lines.

The railroads also pointed out at the January 13th meeting that the opportunity to reduce the burden of PTC through a *de minimis* provision has been missed because the *de minimis* provision in the existing PTC regulations contains restrictions making it virtually useless.

Emergency Escape Breathing Apparatus

On October 5, 2010, the FRA proposed standards implementing the Rail Safety Improvement Act's (RSIA) mandate for train crews to be supplied emergency escape breathing apparatus. The FRA estimated the cost benefit ratio at 6 to 1, with total costs ranging from \$74 - \$82 million. The AAR believes that the FRA's proposals to expand the materials subject to the mandate beyond what the RSIA requires, institute burdensome inspection requirements and require unnecessary recordkeeping are good examples of over-intrusive regulations that this White House is looking to eliminate.

Locomotive Inspections

The AAR petitioned the FRA in 2002 to adopt performance standards in lieu of the costly daily and periodic locomotive inspection requirements currently mandated by the FRA. The AAR believes this is aligned with President Obama's recent Order directing agencies to "specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt."

In the petition, the AAR estimated that daily locomotive inspections cost Class I railroads a minimum of \$60 million annually and periodic inspections cost Class I railroads approximately \$350 million annually. The AAR also observed that the annual number of accidents attributable to locomotive defects is generally well under 100. The AAR also noted that Canada does not require either daily or periodic inspections.

Track Inspections

In its just released report, "Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology," the Government Accountability Office noted that a number of people it consulted in preparing the report believed the current regulations are a disincentive to using new track inspection technologies. GAO stated that the concern is that these technologies "identify track defects perceived as too insignificant to pose a safety risk, but which nonetheless require remedial action under current regulations once such defects are identified." GAO reported that FRA is considering changes to its regulations and plans on issuing a notice of proposed rulemaking on the track inspection regulations in the spring of 2011. Clearly, changes to the track inspection regulations to correct disincentives to employ improved track inspection technologies represent the type of action required by the Executive Order. (See pp. 32 and 42 of the GAO report.)

Intermediate Inspections

With automated inspection equipment available, requiring an intermediate (1,000 mile) inspection by a qualified person is a costly, obsolete requirement. Indeed, the ECP-brake regulations require an inspection every 3,500 miles. FRA should repeal the 1,000-mile inspection requirement on routes equipped with hot-wheel detectors.

Signal Inspections

The FRA imposes a number of longstanding requirements for signal inspections, beginning with the monthly inspections that do not take into account or reflect modern electronic monitoring capability.

Cranes

The AAR believes the recently promulgated OSHA regulations governing the use of cranes along the railroad's right of way is an excellent example of a regulation President Obama wants to eliminate because they "are just plain dumb," as applied to the railroad industry. The OSHA regulations are not only inappropriate for railroad work, but they don't take into account the unique scenarios encountered in the railroad industry. Railroad workers would have to be trained on work they would never do, using equipment they would never use in their railroad work, to comply with the OSHA regulations.

The AAR has challenged the OSHA regulations in court and discussions have already started with OSHA. It would be beneficial for FRA to bring its expertise to the discussion and exercise its jurisdiction over crane safety.

Dark Territory Technology

The RSIA requires the FRA to prescribe standards governing the use of technology in dark territory. This potentially could be another area where the railroads are required to spend considerable sums on technology that is very cost ineffective.

Civil Penalties

FRA has proposed a tripling of the civil penalties assessed against the railroads for violations of its regulations. Given that the railroads have continually improved their safety records over the last 30 years, a tripling of penalties makes no sense.

Risk Reduction Program

The RSIA requires FRA to issue regulations requiring Class I and passenger railroads to develop risk reduction programs, addressing risk analysis of a carrier's operating rules and employment levels; plans to reduce accidents and injuries; fatigue management plans; and technology implementation, including analysis of ECP brakes, rail integrity systems, and switch position indicators. This potentially could be another area where the railroads are required to spend considerable sums without a corresponding benefit.

Whistleblower Complaints

The Occupational Safety and Health Review Commission has before it cases in which the issue is whether an employee believing the whistleblower protection statute, 49 U.S.C. section 20109, has been violated can pursue remedies under both the Railway Labor Act and before OSHA. OSHA should issue a regulation providing that the employee must choose which remedy to pursue. It makes no sense to have two simultaneous proceedings addressing the same issue in which contradictory decisions can be rendered.

The President's January 18th Executive Order is a well-timed directive. The freight railroads are committed to ensuring that this country's rail network remains the safest, most reliable and most efficient in the world. We are also committed to helping this President achieve full economic recovery and job creation.

The AAR is hopeful that the FRA will work with the railroads when it undertakes the regulatory review called for by the President and take into account those issues identified in this letter.

Sincerely,

Edward R. Hamberger

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: Edward R. Hamberger

(2) Other than yourself, name of entity you are representing:
Association of American Railroads

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

Yes.

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

No grants or contracts.


Signature

3/16/11
Date

EDWARD R. HAMBERGER
President and CEO
Association of American Railroads

Ed Hamberger serves as President and Chief Executive Officer of the Association of American Railroads (AAR). Mr. Hamberger has over thirty years experience in public policy through his work in both the executive and legislative branches of government, as well as his career as an attorney.

Prior to joining the AAR in July 1998, he was the managing partner of the Washington, DC office of Baker, Donelson, Bearman & Caldwell. He came to the firm in 1989 after having served as Assistant Secretary for Governmental Affairs at the Department of Transportation.

Mr. Hamberger began his career in transportation in 1977 as General Counsel of the National Transportation Policy Study Commission. In 1985, he was appointed as a member of the Private Sector Advisory Panel on Infrastructure Financing and in 1994 served as a member of the Presidential Commission on Intermodal Transportation. Most recently, he served on the Blue Ribbon Panel of Transportation Experts, appointed by the National Surface Transportation Policy and Revenue Study Commission.

Mr. Hamberger received his Juris Doctor, and both a Master of Science and a Bachelor of Science, in Foreign Service from Georgetown University.

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(1) Name: **Mark Manion**

(2) Other than yourself, name of entity you are representing:

Norfolk Southern Corporation

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES


If yes, please provide the information requested below and attach your curriculum vitae.

(See Attachment)

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

(See Attachment)


Signature


Date

Disclosure of Federal Grants Awarded FY2009, FY2010 and FY2011
Norfolk Southern Corporation and subsidiaries
(excludes Section 130 funds and other Federal-aid grants and contracts awarded under 49 C.F.R.
Part 646, Subpart B)

<u>Agency / Program</u>	<u>Project Description</u>	<u>Federal Grant Amount (millions)</u> (Amount listed is the total amount of the project grant, not all of which necessarily has been or will be awarded to Norfolk Southern as grantee or sub-grantee)
U.S. DOT American Recovery and Reinvestment Act of 2009 'TIGER' Program	Crescent Corridor Intermodal Terminal in Memphis	\$52.50
U.S. DOT American Recovery and Reinvestment Act of 2009 'TIGER' Program	Crescent Corridor Intermodal Terminal in Birmingham	\$52.50
U.S. DOT American Recovery and Reinvestment Act of 2009 'HS/PR' Program/CREATE Program (Awarded in FY 2010; No agreement with NS yet)	Englewood Flyover	\$133
U.S. DOT American Recovery and Reinvestment Act of 2009 'HS/PR' Program (Awarded in FY 2010; No agreement with NS yet)	Indiana Gateway	\$71.30
U.S. DOT American Recovery and Reinvestment Act of 2009 'HS/PR' Program (Awarded in FY 2010; No agreement with NS yet)	Michigan Station Improvement Projects	\$40
U.S. DOT American Recovery and Reinvestment Act of 2009 'HS/PR' Program (Awarded in FY 2010; No agreement with NS yet)	Knowledge Corridor between Springfield and East Northfield; Fitchburg Commuter Extension	\$125

U.S. DOT American Recovery and Reinvestment Act of 2009 'HS/PR' Program (Awarded in FY 2010; No agreement with NS yet)	Charlotte-Raleigh Southeast Corridor	\$545
U.S. DOT/FRA Railroad Safety Technology Program	MeteorComm LLC* PTC Radio System Grant (* - Norfolk Southern maintains 25% ownership of MeteorComm LLC)	\$26.40
U.S. DOT SAFETEA-LU (Various Agreements entered into in FY2009 and FY 2010)	Chicago CREATE	\$15.93
U.S. DOT American Recovery and Reinvestment Act of 2009 (Agreement with NS executed in FY 2010)	Airline Yard in Toledo, Ohio	\$6.50
U.S. DOT Congestion Mitigation and Air Quality Grant (Agreement with NS executed in FY 2010)	Heartland Connector between Columbus and Cincinnati	\$1.07
U.S. DOT American Recovery and Reinvestment Act of 2009 (Agreement with NS executed in FY 2010)	Heartland Connector between Columbus and Cincinnati	\$3.60
U.S. DOT SAFETEA-LU (Agreement with NS executed in FY 2011)	Charlotte Intermodal Facility	\$14.03
U.S. DOT SAFETEA-LU (Agreement with NS executed in FY 2010, amendment executed in FY 2011)	Wye Track in Savannah, GA	\$1.50
Federal Railroad Administration Rail Relocation Grant Program (No Agreement with NS yet)	Dillerville Yard Relocation, Lancaster, PA	\$4.00
U.S. DOT SAFETEA-LU CMAQ Grant (No Agreement with NS yet)	Dillerville Yard Relocation, Lancaster, PA	\$5.08

Federal Highway Administration, Surface Transportation Priorities (No Agreement with NS yet)	Autoport Passing Siding Extension in Wilmington, DE	\$0.98
Federal Highway Administration Congestion Mitigation and Air Quality Grant	Locomotive Retrofit (New Jersey)	\$0.90
U.S. EPA National Clean Diesel Grant Program (ARRA)	Locomotive Retrofit (Pennsylvania)	\$1.50
Department of Energy and FRA, Consolidated Appropriations Act of 2008 (Various Grants in FY 2009, FY 2010, and FY 2011)	NS 999 Locomotive Project	\$3.00
U.S. Army Corps of Engineers, Lake Pontchartrain and Vicinity And Related Hurricane Protection Projects (Various Reimbursement Agreements in FY 2009, FY 2010, and FY 2011)	New Orleans Levee Project	\$1.78
Federal Emergency Management Agency, Freight Rail Security Grant Program	Hannibal Bridge Surveillance Camera Project	\$0.72
Federal Emergency Management Agency, Urban Area Security Initiative	Croxtan Yard Security Hardening Project	\$0.30
Federal Emergency Management Agency, Freight Rail Security Grant Program	Cleveland Drawbridge #1 Cameras and Security Surveillance Project	\$0.24
FRA, Omnibus Appropriations Act of 2009	Wayside Wheel Profile Measurement System	\$0.20
FRA, Omnibus Appropriations Act of	High Pressure Heat Exchanger to Recover and Convert Locomotive Engine	\$0.20

2010		
FRA, Risk Reduction Program	Broken Rail Risk Reduction Testing Program	\$0.07
FRA, Freight Rail Security Grant Program	Infrastructure Protection	\$2.08



Date: March 14, 2011

Name: **Mark D. Manion**

Title: **Executive Vice President and Chief Operating Officer**

Date and Place of Birth: December 9, 1952, Spokane Washington

Education: 1975 – University of Missouri, BS in Business Management

Career Summary: Norfolk Southern Corporation

1975 – Management Trainee, Advanced Training
1976 – Safety Agent
1976 – Assistant to Trainmaster, Chicago, IL
1977 – Assistant Trainmaster, Decatur Division
1979 – Assistant Trainmaster, Decatur Terminal
1980 – Trainmaster, Shenandoah Division
1984 – Assistant to General Manager, Western Lines
1985 – Assistant Division Superintendent, Eastern Division
1988 – Superintendent, St. Louis Terminal
1991 – Superintendent, Lake Division
1994 – Assistant Vice President Transportation Operations
1995 – General Manager Western Region
1998 – Vice President Mechanical
2001 – Vice President Transportation Services & Mechanical
2003 – Senior Vice President Transportation Operations
2004 – Executive Vice President Operations
2009 – Executive Vice President and Chief Operating Officer

**Other Activities
& Affiliations:**

Board of Directors, United Way of South Hampton Roads

Board of Directors, Transportation Technology Center, Inc.

Chair, Association of American Railroads, Safety and Operations Management Committee